

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REGENTS OF THE UNIVERSITY OF
CALIFORNIA ON BEHALF OF HOSPITALS
AUXILIARY OF THE MEDICAL CENTER AT THE
UNIVERSITY OF CALIFORNIA, SAN
FRANCISCO,

No. C 04-03756 MHP ARB

Plaintiff,

v.

PRINCIPAL FINANCIAL GROUP et al.,
Defendants.

ORDER
**Re: Supplemental Briefing
on Preemption**


On September 26, 2005, defendants Principal Financial Group et al. and plaintiff Regents of the University of California appeared for oral argument in connection with defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). At oral argument, the court noted that one of plaintiff's claims, under California Health & Safety Code section 1371.8, might be preempted by federal Medicare law. In California Association of Health Plans v. Zingale, No. 00-06803, 2001 U.S. Dist. LEXIS 21497 (C.D. Cal. August 27, 2001), the court held without discussion that many of California's state law standards for health care providers, including section 1371.8, are preempted by section 1856(b)(3)(B) of the Social Security Act, 41 U.S.C. section 1395w-26(b)(3)(B). Id. at *2-*3. In light of Zingale, this court requested supplemental briefing confined to the question of whether section 1371.8 is preempted as plaintiff seeks to apply it in this case.

1 Instead, plaintiff submitted a nine-page brief discussing the “viability”—in other words, the
2 factual merits—of the section 1371.8 claim. The court will assume that plaintiff inadvertently
3 misconstrued the earlier order; for the sake of complete clarity this order sets forth in writing what is
4 expected. Plaintiff shall submit within 10 days one of the following: (1) a brief no greater than ten
5 pages in length explaining why section 1371.8 is not preempted in this case; or (2) a statement
6 voluntarily dismissing the section 1371.8 claim. Should plaintiff choose to submit a brief, the brief
7 will discuss only the jurisdictional question of preemption and will avoid any discussion of the
8 substantive merits of the 1371.8 claim.

9
10 IT IS SO ORDERED.

11
12
13 Date: October 11, 2005

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


MARILYN HALL PATEL
United States District Court Judge
Northern District of California